

EXHIBIT “B”

**Notice Pursuant to F.R.B.P.
Rule 2004 with cover letter**

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October 27, 2022

**Via E-Mail to: dkirby@kacllp.com
And Regular Mail**

Dawn Kirby, Esq.
Kirby Aisner & Curley, LLP
700 Post Road, Suite 237
Scarsdale, New York 10583

Re: In re: Blue Diamond Air Systems, Inc.
Chapter 11 Bankruptcy Case No. 8-22-72698-ast

Creditors: Sheet Metal Workers' National Pension Fund, National Energy Management Institute Committee for the Sheet Metal and Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, International Training Institute for the Sheet Metal and Air Conditioning Industry and National Stabilization Agreement of the Sheet Metal Industry Fund ["Funds"]

Dawn:

To determine the scope of Blue Diamond Air Systems, Inc.'s delinquency with the Funds, they would like to conduct a project-by-project payroll audit of Blue Diamond Air Systems, Inc.'s books and records covering the period 2021 to date. They are entitled to this audit in accordance with the collective bargaining agreement, the Funds' Agreements and Declarations of Trust, the Funds' Collections Procedures, and the Employee Retirement Income Security Act of 1974 ["ERISA"]. Central States, Southeast & Southwest Pension Fund v. Central Transport, Inc., 472 U.S. 559 (1985); Jaspen v. Glover Gas Corporation, 80 F.3d 38 (2nd Cir. 1996); New York State Teamsters Conference Pension Fund v. Boening Bros., Inc., 92 F.3d 127 (2nd Cir. 1996); New York State Teamsters Health and Hospital Fund v. Silverline Construction, Inc., 11 EBC 2371 (N.D.N.Y. 1989).

In connection with the request for an audit, I am enclosing a copy of our Notice Pursuant to F.R.B.P. Rule 2004 with attached Request for Production of Documents. The documents sought at Request Nos. 1-2 are required for the project-by-project audit and we are



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interested in those documents as soon as possible. We can address Nos. 3-5 at a later date. Please let me know by November 4, 2022, whether your client will voluntarily produce the books and records for an audit or whether it is necessary to file the Rule 2004 motion.

I look forward to hearing from you.

Sincerely,

BLITMAN & KING LLP

A handwritten signature in blue ink, appearing to be "J. Clark", written over the printed name "Jennifer A. Clark".

Jennifer A. Clark

JAC/lld

cc: Tearyn Loving, General Counsel (**Via E-Mail**)
Sheet Metal Workers' National Pension Fund

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 Syracuse, New York 13204
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**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF NEW YORK**

In Re:

BLUE DIAMOND AIR SYSTEMS, INC

Debtor.

Chapter 11
 Case No. 8-22-72698-ast

**NOTICE PURSUANT TO
 F.R.B.P. RULE 2004**

PLEASE TAKE NOTICE, that Creditors Sheet Metal Workers' National Pension Fund, National Energy Management Institute Committee for the Sheet Metal and Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, International Training Institute for the Sheet Metal and Air Conditioning Industry and National Stabilization Agreement of the Sheet Metal Industry Fund [referred to as "Funds" or "Creditor Funds"], pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, will take the testimony, upon oral examination, of Blue Diamond Air Systems, Inc., whose last known address is 1165 Station Road, Medford, New York 11763, before a court stenographer who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein. The deposition will concern the liabilities of Debtor Blue Diamond Air Systems,

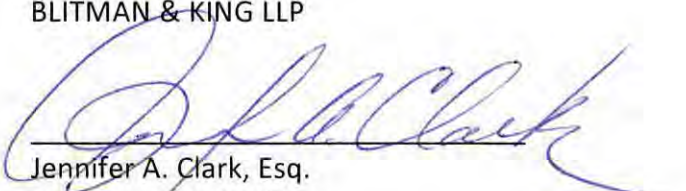
Inc. for contributions due on behalf of its employees as well as Debtor's other liabilities and assets. The deposition will be taken at the offices of Blitman & King LLP, Franklin Center, Suite 300, 443 North Franklin Street, Syracuse, New York 13204 on the 30th day of November, 2022 at 10:00 a.m. in the forenoon of that day.

The person to be examined is required to produce at such examination the documents set forth in the attached Creditors' First Request for Production of Documents, dated October 27, 2022.

Dated: October 27, 2022

BLITMAN & KING LLP

By:


Jennifer A. Clark, Esq.

Attorneys for Creditors

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TO: Dawn Kirby, Esq.
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ATTACHMENT TO RULE 2004 EXAMINATION

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Creditors Sheet Metal Workers' National Pension Fund, National Energy Management Institute Committee for the Sheet Metal and Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, International Training Institute for the Sheet Metal and Air Conditioning Industry and National Stabilization Agreement of the Sheet Metal Industry Fund through their undersigned attorneys and pursuant to Rule 2004 of the Federal Bankruptcy Rules, hereby request that Debtor Blue Diamond Air Systems, Inc. produce and permit Creditors, or their attorneys, or someone else acting on their behalf, to inspect and to copy the documents described herein.

DEFINITIONS

A. As used herein, the terms "Debtor", "you" or "your" means Debtor Blue Diamond Air Systems, Inc., as well as any predecessors, successors in interest or alter-egos to the named Debtor together with any other person or entity acting or purporting to act on behalf of said Debtor, whether as employee, attorney, accountant, agent, sponsor, spokesperson, or otherwise.

B. As used herein, the term "Creditors" means the Creditors Sheet Metal Workers' National Pension Fund, National Energy Management Institute Committee for the Sheet Metal and Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, International Training Institute for the Sheet Metal and Air Conditioning Industry and National Stabilization Agreement of the Sheet Metal Industry Fund.

C. As used herein, the term "Funds" mean the Sheet Metal Workers' National Pension Fund, National Energy Management Institute Committee for the Sheet Metal and Air Conditioning Industry, Sheet Metal Occupational Health Institute Trust, International Training Institute for the Sheet Metal and Air Conditioning Industry and National Stabilization Agreement of the Sheet Metal Industry Fund.

D. The term "document" or "documents" means any writing of any kind, including originals and all nonidentical copies (whether different from the originals by reason of any notation made on such copies or otherwise) as well as, without limitation, all letters, correspondence, writings, financial statements, rent rolls, operating reports, bank statements, bank reconciliations, receipts, invoices, canceled checks, check registers, cash receipts and cash disbursement journals, leases, deeds of trust, mortgages, accounting journals, inventory reports, contracts, detail regarding improvements, repairs and maintenance, drawings, notes, memoranda, desk calendars, diaries, statistics, letters, lists, telegrams, minutes, contracts, reports, studies, charts, appraisal reports, purchase or sale proposals, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, intraoffice and interoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, motion pictures, video tapes, computer printouts, teletypes, telefax, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing, tapes, tape recordings, transcripts, graphic or aural records or representations of any kind, of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control.

E. As used herein, the phrase “other document” shall include all types of recorded information, including but not limited to, writings, drawings, graphs, charts, photographs, phonorecords, and all other data compilations from which information can be obtained or which, if necessary, can be translated through detection devices into reasonably usable form.

F. “Possession,” “custody” or “control” includes the joint or several possession, custody or control not only by the person or entity to whom this request is addressed, but also the joint or several possession, custody or control by each or any other person or entity acting or purporting to act on behalf of said person or entity, whether as employee, attorney, accountant, agent, sponsor, spokesperson, or otherwise. Consistent with Rule 34, you are required to disclose documents in the possession, custody, and/or control of Defendants’ sureties.

G. The phrase “relating to” means supports, evidences, describes, mentions, consisting of, referring to, reflecting, or being legally, logically or factually connected in any way with the subject matter.

H. The “Property” means real or personal property of the estate, the Debtor and its affiliates, including, but not limited to, any alter egos, successors, related entities, controlled group members (as that phrase is defined by the Internal Revenue Code) or joint employers of Debtor.

I. The term “estate” or “estates” means the bankruptcy estates of the Debtor in accordance with 11 U.S.C. §541.

J. As used herein, the phrase “Collective Bargaining Agreement” means: (a) the agreement of Sheet Metal Contracting Division of the Construction Industry Between

International Association Sheet Metal, Air, Rail and Transportation Workers Local Union No. 28 SMART and Sheet Metal & Air Conditioning Contractors Association of New York City, Inc. and SMACNA of Long Island, Inc. and those Employers who subscribed thereto Effective November 1, 2021 through October 31, 2025.

INTRODUCTION

K. It is requested that the aforesaid production be permitted immediately after Debtor's response to this request has been served and no later than November 30, 2022, which is thirty (30) days after service of this Request upon the Debtor.

L. Creditors request that the documents be made available for this inspection at the offices of Sheet Metal Workers' National Pension Fund, Attn: Kenneth L. Anderson, Jr., Audit & Delinquency Manager, 3180 Fairview Park Drive, Suite 400, Falls Church, Virginia 22042. Inspection will be made by means of personal examination and copying by Creditors, their attorneys, or someone acting on their behalf.

M. Debtor is also requested to appropriately designate each document produced so as to indicate the paragraph pursuant to which each document is produced. If a document is produced pursuant to more than one paragraph, the designation should so indicate.

N. If any document was, but is no longer, in your possession or subject to your custody or control, or was known to you, but is no longer in existence, state what disposition was made of it or what became of it.

O. If any document is withheld based on an assertion of privilege, identify the author and the recipient of the document, the date the document was created, and the basis for failing to disclose the document.

REQUEST TO PRODUCE

1. The following records covering the period January 1, 2021 through the date that the Creditors conduct their payroll audit of Debtor:

- a. Payroll records, certified payroll records filed on public projects, ledgers, books of accounts, W-2 forms, canceled checks, check stubs, and all other documents showing the following:
 - i. The names of all employees of Debtor and the names of all employees of Debtor's subcontractors, both union and non-union employees and subcontractors, their job titles, job duties, rates of pay, job locations, hours worked and amounts of wages paid and fringe benefit contributions remitted or due and owing on their behalf for the period January 1, 2021 through the date the Creditors conduct the payroll audit.
 - ii. All remittance reports along with covering letters or other accompanying documents submitted or forwarded by Debtor to the Funds and Unions for the period January 1, 2021 through the date the Creditors conduct the payroll audit.
- b. All individual earnings records, including timesheets and time cards with name, social security number, job title and job description of each employee of Debtor for the period January 1, 2021 through the date the Creditors conduct the payroll audit.
- c. All records describing, in detail, the nature of the work performed by each employee or subcontractor of Debtor and the location of the work during each month during the period January 1, 2021 through the date the Creditors conduct the payroll audit.
- d. All Federal and State payroll tax returns, including, but not limited to, W-2's, W-3's, New York State Form NYS-45, 941, WRS-2, IA-5 and 1099's for Debtor for the period January 1, 2021 through the date the Creditors conduct the payroll audit.

- e. Debtor's cash disbursement journals and general ledgers for the period January 1, 2021 through the date the Creditors conduct the payroll audit.

2. Documents and job cost records, including contracts, change orders, requisition requests, checking account statements, deposit slips, cancelled checks, and credit card statements required to be kept by the Debtor in accordance with New York Lien Law, Section 75, showing the money earned by the Debtor, monies received by the Debtor, monies paid to the Debtor, monies paid on behalf of the Debtor, and the disposition of the monies earned and/or received by the Debtor in connection with the construction projects during the period January 1, 2021 to date.

3. Documents showing the amount of money paid to Dime Community Bank, as successor to BNB Bank, First Indemnity of America Insurance Company, LG Funding, LLC, Cloudfund LLC, and Green Note Capital Partners Inc., the date of each payment to Dime Community Bank, as successor to BNB Bank, First Indemnity of America Insurance Company, LG Funding, LLC, Cloudfund LLC, and Green Note Capital Partners Inc., and the source of monies to make each payment.

4. A copy of the Lien Law Section 73 Notice of Lending filed by Dime Community Bank, as successor to BNB Bank, First Indemnity of America Insurance Company, LG Funding, LLC, Cloudfund LLC, and Green Note Capital Partners Inc. together with documents showing the date of filing and the place of the filing of the Notice of Lending.

5. Documents relating to transactions with and amounts paid to insiders, affiliates, alter egos, successors, controlled group members or joint employers of the Debtor since January 1, 2021.

Dated: October 27, 2022

BLITMAN & KING LLP

By:



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Attorneys for Creditors

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